

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

STATE OF OHIO,

Plaintiff,

v.

CHARLES HORTON,

Defendant.

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Case No. 1:19-cv-838

Judge Susan J. Dlott

**ORDER ADOPTING IN PART  
REPORT AND  
RECOMMENDATION**

This matter is before the Court on the Magistrate Judge's Report and Recommendation dated October 9, 2016 (Doc. 4). Although proper notice was given to both parties pursuant to 28 U.S.C. § 636(b)(1)(C), no objections have been filed. For the reasons set forth below, the Court will adopt the Magistrate Judge's Report and Recommendation in part.

As detailed in the Report and Recommendation, this case marks the third time that Horton has improperly removed a pending state criminal action. After thorough review, the Court adopts the Report and Recommendation to the extent it determines that this Court lacks subject matter jurisdiction over the criminal action removed. The Court rejects the Report and Recommendation, however, to the extent it recommends dismissing the case with prejudice. Where a state prosecution is improperly removed, it must be remanded to the state court from which it was removed. *See* 28 U.S.C. § 1455(b)(4) ("If it clearly appears on the face of the notice and any exhibits annexed thereto that removal should not be permitted, the court shall make an order for summary remand.").<sup>1</sup>

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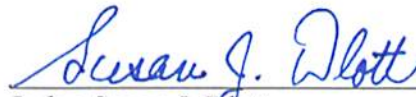
<sup>1</sup> The procedure is the same when a civil action is erroneously removed. *See* 28 U.S.C. § 1447(c) ("If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.").

Accordingly, the Report and Recommendation (Doc. 4) is hereby **ADOPTED IN PART**, and this case is **REMANDED** to the state court from which it was removed. As recommended by the Magistrate Judge for the reasons detailed in the Report and Recommendation, Defendant is **ADMONISHED** that *the Court likely will impose a monetary sanction against him if he again attempts to improperly remove a civil or criminal action from state court to federal court.*

Pursuant to 28 U.S.C. § 1915(a)(3), the Court certifies that an appeal of this Order would not be taken in good faith.

**IT IS SO ORDERED.**

Dated: Nov 4, 2019



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Judge Susan J. Dlott  
United States District Court